IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 29 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NUTAN MILLS LIMITED

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 04/09/2000

ORAL JUDGEMENT

The following questions of law have been referred

under Section 256(1) of the Income Tax Act for our answer:-

"1. Whether, on the facts and in the circumstances of the case, reimbursement of medical expenses to Managing Directors formed part of salary for the purpose of disallowance under Section 40(c) of the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, Premium paid for personal accident policy of the Managing Directors formed part of the salary for the purpose of disallowance under Section 40(c) of the Income-tax Act, 1961?

3. Whether, interest on installments towards betterment charges paid to Ahmedabad Municipal Corporation is allowable in law?

4. Whether, on the facts and in the circumstances of the case, the expenditure of Rs.43,106/- incurred for the issue of bonus shares is allowable in law?"

2. Ld. Counsel Mr.Akil Qureshi appearing for the Department states that all the four questions are squarely covered by the decisions of this Court. So far as question no.1 regarding disallowance of reimbursement of medical expenses to Managing Directors under Section 40(c) of the I.T. Act is concerned, in Commissioner of Income Tax Vs. Ambica Mills Ltd. 236 1999 ITR 921 the question is answered against the assessee. The Division Bench in the case of Ambica Mills (Supra) relying on its earlier decision of the same assessee in that case in 1998 231 ITR 583, held the reimbursement of medical expenses and telephone for Managing Director are benefits or `perquisites' within the meaning of Section 40(c)(i) of the Act and cannot be allowed to the assessee.

3. The question no.2 regarding premium paid for personal accident policy for the Managing Directors is also answered in favour of the assessee in the case of Ambica Mills Ltd. (Supra) 1990 236 ITR 921. On the statement of case in para 2.2, we find that the premium for personal accident insurance of Managing Director was paid by the assesee company itself. As held in the case

of Ambica Mills Ltd. (Supra) since premium were paid directly by the company and it had taken the policies in respect of the Directors to insure itself in respect of liability that might arise towards the Directors the payment has to be allowed under Section 40(c) and 40(Ai).

4. The question no.3 on interest on installments towards betterment charges paid to Ahmedabad Municipal Corporation is concerned, it is squarely covered by the decision in Commissioner of Income Tax Vs. Ahmedabad Mfg. and Calico Printing Co. Ltd. 1995 215 ITR 735. It has been held to be `capital expenditure' and therefore question will have to be answered against the assessee and in favour of the Revenue.

5. The last question no.4 on expenditure incurred on the issue of bonus shares, the same is covered by the Supreme Court decision in Brooke Bond Vs. Commissioner of Income Tax 225 ITR 798. It has been held by the Supreme Court as under:-

> "Expenditure incurred by a company in connection with issue of shares, with a view to increase its share capital, is directly related to the expansion of the capital base of the company, and is capital expenditure, even though it may incidentally help in the business of the company and in the profit-making."

6. In the result, question no.1,3 & 4 are answered against the assessee and in favour of the Revenue and question no.2 is answered in favour of the assessee and against the Revenue. The reference application thus stands dispose of with no orders as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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